



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/567,491

03/10/2006

Johannes Adrianus Cornelis Van Ooijen

20071018

1073

466

7590

12/19/2008

YOUNG & THOMPSON

209 Madison Street

Suite 500

ALEXANDRIA, VA 22314

EXAMINER

ANDERSON, JERRY W

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,491	Applicant(s) VAN OOIJEN, JOHANNES ADRIANUS CORNELIS	
	Examiner JERRY W. ANDERSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/7/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 15, 18, 23 and 26** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. **Regarding claim 15, 18, 23, and 26**, the phrases “preferably” and “more preferably” renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 14-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hoffman*, C., U.S. Pat. # 2,154,449 as evidenced by Titration of weak acid with strong base. Found at http://www.chem.ufl.edu/~itl/2045/lectures/lec_z2.html, hereinafter *Titration*.

7. **Regarding Claim 14**, The Applicant claims a mixture of organic acid salts wherein the cation can be Magnesium or Calcium and the anion is an organic carboxylic acid. Applicant's formula indicates that there is cation in excess of that required for a stoichiometric reaction between the acid and base, that is, in the most common application, more Calcium than can react with Propionic acid. *Hoffman* discloses the use of organic carboxylic acids from 3 to 12 carbon atoms, (lines 29-32 col. 2 '449) and that the cation can be Calcium or Magnesium. (lines 8-10 col. 3 '449) *Hoffman* teaches the alkaline material should be present in sufficient amount to neutralize the acid (lines 51-52 col.2 '449) However, one of ordinary skill in the art at the time of the invention would have considered the invention to have been obvious because the compositional proportions taught by *Hoffman* overlap the instantly claimed proportions and therefore are considered to establish a prima facie case of obviousness. It would have been obvious to one of ordinary skill in the art to select any portion of the disclosed ranges including the instantly claimed ranges for the ranges disclosed by the prior art reference, particularly in view of the fact that: "The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages" In re Petersen 65 USPQ 1379 (CAFC 2003)

8. **Regarding Claim 15**, the Applicant is claiming a mixture of salts prepared by the reaction of a strong base, Calcium or Magnesium hydroxide with a weak acid, the carboxylic acids, wherein the equivalence point is exceeded and there exists an excess of the strong base in the mixture. This occurs during every titration of weak acid by a strong base, an experiment routinely performed in beginning chemistry laboratories. (Titration graph, table, *Titration*) This is a product-by-process claim. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) MPEP 2113.

9. **Regarding Claims 17, 18, 19, and 30**, *Hoffman* discloses the claimed invention, as discussed above including that the acid is a monocarboxylic acid, propionic acid. (lines 29- 32, 35 col. 2, line 61 col. 4,)

10. **Regarding Claims 16, 20, 29, 31, 32, and 33** *Hoffman* discloses the claimed invention, as discussed above including that cations are Magnesium and Calcium, and the acid is propionic acid. (lines 7-8 col. 3, line 35 col.2 , lines 7-10 col. 5, '449)

11. **Regarding Claims 21 and 22**, *Hoffman* discloses the claimed invention, as discussed above including that salt mixture may be added as a solution, (lines 11-13 col. 4 '449) and may be mixed with the dough. (line 12, col. 4, '449), and the dough fermented. (lines 72-75 col. 4 '449)

Art Unit: 1794

12. **Regarding Claims 23 and 26**, *Hoffman* discloses the claimed invention, as discussed above including that the salts were added to the dough are at a ratio of about 0.4 % per mass of dough, or about 0.8 % relative to weight of flour. (lines 62 col. 4, lines 1-4 col. 5 '449)

13. **Regarding Claims 24 and 25**, *Hoffman* discloses the claimed invention, as discussed above including that a dough is made, (lines 53-61 col. 4, '449) which may include a mixture of salts. (lines 5-10 col. 5 '449)

14. **Regarding Claims 27 and 28**, *Hoffman* discloses the claimed invention, as discussed above including that the bread is baked. (Claims 1-14 '449)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jwa

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794